

Federal Communications Commission

DA 02-3048

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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Request for Waiver by)	
)	
South Side Area School District)	File No. SLD-295464
Hookstown, Pennsylvania)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45✓
Universal Service)	
)	
Changes to the Board of Directors of the)	CC Docket No. 97-21
National Exchange Carrier Associations, Inc.)	

ORDER**Adopted: November 6, 2002****Released: November 7, 2002**

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. The Telecommunications Access Policy Division has under consideration a Waiver Request filed by South Side Area School District (South Side), Hookstown, Pennsylvania, seeking waiver of the Commission's rules governing the schools and libraries universal service support mechanism.¹ South Side requests waiver of the filing deadline for Funding Year 2002.² For the reasons set forth below, we deny South Side's Waiver Requests

2 Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.³ In order to receive discounts on eligible services, the Commission's rules require that the applicant submit to the Schools and Libraries Division (SLD) of the Administrator a completed FCC Form 470, in which the applicant sets forth its technological needs and the services for which it seeks

¹ Letter from Lori P. Byron, South Side Area School District, to Federal Communications Commission, tiled April 29, 2002 (Waiver Request). Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Universal Service Administrative Company (Administrator) may seek review from the Commission. 47 C.F.R. § 54.719(c).

² See Waiver Request. Previously, this funding period would be referred to as Funding Year 5. Funding periods are now described by the year in which the funding period starts. Thus the funding period which began on July 1, 2001 and ends on June 30, 2002, previously described as Funding Year 4, and is now called Funding Year 2001. The funding period which began on July 1, 2002 and ends on June 30, 2003, previously described as Funding Year 5, and is now called Funding Year 2002, and so on.

³ 47 C.F.R. §§ 54.501-54.503.

discounts.⁴ Once the applicant has complied with the Commission's competitive bidding requirements and entered into an agreement for eligible services, it must file an FCC Form 471 application to notify the Administrator of the services that have been ordered, the carrier with whom the applicant has entered an agreement, and an estimate of funds needed to cover the discounts to be given for eligible services.⁵

3. The Commission's rules require that the applicant file a completed FCC Form 471 by the filing window deadline to be considered pursuant to the funding priorities for in-window applicants.⁶ In order to have successfully completed the submission of the FCC Form 471 application in Funding Year 2002, applicants who filed electronically must also have completed and mailed to SLD the Item 21 description of services, and completed and sent either electronically or by mail a Block 6 certification.⁷ Prior to Funding Year 2001, the deadline by which these items had to be received by SLD to be considered within the window was later than the deadline for the filing of the FCC Form 471, so that applicants could file electronically on the last day of the filing window, and mail their certifications and attachments thereafter. However, because in previous years the delivery of a number of applications was significantly delayed by the postal service, SLD, starting in Funding Year 2001, directed that **all** FCC Forms 471 would be deemed filed when postmarked, rather than when received by SLD.⁸ The last day of the filing window for Funding Year 2002 was January 17, 2002.⁹

4. The record reveals that South Side filed the electronic portion of its FCC Form 471 on January 16, 2002, before the filing window had closed.¹⁰ However, it mailed its Block 6 Certifications and Signature pages and Item 21 Attachment on January 22, 2002.¹¹

5. South Side admits that it was late in submitting its FCC forms, explaining that it was misled by information from SLD.¹² South Side claims that during the week that the filing window closed, it was having problems accessing the Internet. Although South Side was able to submit the FCC Form 471 online, South Side claims that it had printer difficulties that prevented it from printing the Block 6 Certifications and Signature pages at that time. South Side also claims that it called SLD and was told by an SLD representative that the Block 6 Certifications and Signature pages and the Item 21 attachment could be mailed after the filing deadline

⁴ 47 C.F.R. § 54.504(b)

⁵ 47 C.F.R. § 54.504(c)

⁶ 47 C.F.R. §§ 54.504(c), 54.507(g).

⁷ Block 6 is the section of the FCC Form 471 where applicants must sign the form and make certifications required under program rules. See FCC Form 471, Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (October 2000).

⁸ See SLD website, What's New (November 2, 2000)
<<http://www.sl.universalservice.org/whatsnew/110200.asp#110200>> (SLD Year 4 Change Notice).

⁹ SLD website, What's New Archives (January 10, 2002)
<<http://www.sl.universalservice.org/whatsnew/012002.asp#011002b>>.

¹⁰ FCC Form 471, South Side Area School District, filed January 16, 2002 (electronic portion).

¹¹ *Id.* (envelope containing attachments and certification with postmark of January 22, 2002).

¹² Waiver Request,

closed.¹³ South Side filed the instant Waiver Request with the Commission.

6. South Side's Waiver Request can be granted only if waiving the deadline is supported by a showing of good cause.¹⁴ A deviation from a general rule is not permitted unless special circumstances warrant it and the deviation would better serve the public interest than strict adherence to the general rule." SLD reviews and processes thousands of applications each year, and therefore it is administratively necessary to place on the applicant responsibility for complying with the Commission's rules and procedures.¹⁶ Timely submissions are needed because, under the funding mechanism, all requests for funding received within the initial filing deadline must be analyzed together in order to allocate funds pursuant to the Commission's funding priorities."

7. As we have consistently held in the past, it is the applicant who has responsibility ultimately for the timely submission of its application." We have denied waiver requests based upon an applicant's claim that it simply misunderstood the rules.¹⁹ Specifically, we have denied requests for waivers when applicants claimed that they misunderstood the rules for timing of filing the certification and attachments for FCC Form 471.²⁰ We have also held that the failure of SLD representatives to respond accurately to inquiries does not relieve applicants of this responsibility.²¹

8. Website information about the filing window deadline for the FCC Form 471 clearly indicated that both the Item 21 Attachment and the Block 6 Certifications and Signature pages had to be postmarked by the January 17 deadline for the application to be treated as filed within the filing window.²² Furthermore, a special pop-up notice appeared for online filers at

¹³ *Id*

¹⁴ See 47 C.F.R. § 1.3.

¹⁵ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹⁶ See *Request for Review by Anderson School Sraatshurg, Federal-State Joint Board on Universal Service. Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-133664, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 25610, para. 8 (Com. Car. Bur. 2000).

"See 47 C.F.R. § 54.507(g).

¹⁸ See *FCC Overrules Caldwell Televisions Associates, Ltd.*, Public Notice, 58 RR 2d 1706, 1707 (1985) (*Caldwell*).

¹⁹ *Request for Review by St. Mary's Public Library, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. NEC.471.12-07-99.02000002 CC Docket Nos. 96-45 and 97-21, Order, 16 FCC Rcd 12936, para. 5 (Com. Car. Bur. 2001) (denying a waiver request to the extent it is requested due to misunderstanding of program rules).

²⁰ *Request for Review by Information Technology Department State of North Dakota. Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-245592, CC Docket Nos. 96-45 and 97-21, Order, DA 02-956 (Wireline Com. Bur. rel. April 24, 2002).

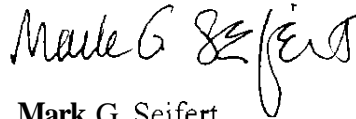
²¹ *Request for Review by Smackover Public Schools, Federal-State Joint Board on Universal Service. Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-205330, CC Docket Nos. 96-45 and 97-21, Order, DA 01-2963, para. 8 (Com. Car. Bur. rel. December 19, 2001).

²² SLD website, FCC Form 471 Window Opens for Year 5 Applicants; Filing Requirements Established (November 5, 2001), <<http://www.sl.universalservice.org/whatsnew/112001.asp>>; SLD website, Urgent Reminder of Filing Requirements for Year 5, (January 10, 2002), <<http://www.sl.universalservice.org/whatsnew/012002.asp#011002b>>.

the start of the online application process, and again after the applicant clicked on the "Submit" button.²³ We conclude that South Side has failed to demonstrate special circumstances upon which its Waiver Request can be granted.

9. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and 54.722(a), that the Waiver Request filed by South Side Area School District, Hookstown, Pennsylvania, on **April 29, 2002** IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Mark G. Seifert
Deputy Chief, Telecommunications Access Policy Division
Wireline Competition Bureau

²³ The text of the notice was as follows: "WARNING: There are only [applicable number] days left before the Funding Year 5 Form 471 Application Filing window closes. If you are exiting this Form 471 without clicking the "Submit" button on the Stop Sign page, you must return to this Form 471 using the "Continue Incomplete" button in order to complete and submit this Form 471 online. In order to file your application within the filing window, you must submit your Form 471 and submit your Block 6 certification (whether online or on paper) before the window closes at 11:59 P.M. EST on January 17, 2002."